

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion to make adjustments to the universal service fund mechanism established in NUSF-26.	Application No. NUSF-50 Progression Order No. 2
In the Matter of the Commission, on its own motion, seeking to investigate whether the zones established in Docket No. C-2516 are appropriate in light of NUSF-26 findings and conclusions.	Application No. C-3554/PI-112
QWEST CORPORATION'S RESPONSE TO MOTION TO STRIKE PORTIONS OF DIRECT TESTIMONY	

Qwest Corporation ("Qwest") responds to Staff's motion to strike certain portions of the prefiled direct testimony of Peter Copeland and William Fitzsimmons filed on behalf of Qwest on April 17, 2007, as follows:

1. *The Commission Must Develop An Evidentiary Record In This Docket Sufficient For Review As To Whether Any Ordered Rates Comply With Federal Law.*

Staff's Motion to Strike should be denied, as it is an improper attempt to remove the vast majority of Qwest's testimony from the Commission's consideration. In this proceeding, the Commission must have an evidentiary record sufficient to meet the requirements of FCC rules, as setting prices for unbundled loops is a function delegated to this Commission by Congress through the 1996 Telecommunications Act. More specifically, 47 CFR § 51.505(e)(2) requires:

Any state proceeding conducted pursuant to this section shall provide notice and an opportunity for comment to affected parties and shall result in the creation of a written factual record that is sufficient for purposes of review. The record of any state proceeding in

which a state commission considers a cost study for purposes of establishing rates under this section shall include any such cost study.

To date, there has been insufficient notice and opportunity for comment on Staff's proposal, and no "written factual record . . . sufficient for purposes of review." In the two orders presenting the Staff's proposed Unifying Methodology ("UM") (the Order Opening Docket in C-3554/PI-112 dated February 28, 2006 and the Order Releasing Staff Proposal in NUSF-50, Progression Order No. 3/C-3554/PI-112 dated February 13, 2007), there has only been the presentation of Staff's conclusions. Staff's testimony filed on April 17, 2007 totals less than twelve pages between two witnesses, and does little more than repeat the conclusory statements contained in the two prior orders. The UM contains a significant amount of information which is presented without any evidentiary basis to support the use of that information. Attachment B contains statements regarding (1) the number and allocation of Qwest's total residential access lines; (2) the number and allocation of households in Qwest's serving areas; (3) the expected loop cost for households generated by the Staff's methodology imported from dockets NUSF-26 and NUSF-50; and (4) the distribution of those costs; none of which is supported by any records, information, or analysis in the record in this case. The Staff proposal does not even present any evidence as to how out-of-town areas and in-town areas were determined. This bare presentation cannot satisfy the requirements to establish a record proving that the zones and rates established in this docket are based on TELRIC-compliant costs or cost models.

Instead, Staff attempts an analytical shortcut, and through its Motion to Strike, attempts to impose its analytical and evidentiary approach on Qwest. This Commission should decline Staff's invitation to take a shortcut, not only in the final analysis of this

docket, but also with respect to the Motion to Strike. First, Staff claims that there should be no evidence or discussion in this case of the methodology used in Docket No. NUSF-26 to allocate a limited pool of NUSF support among the state's highest cost areas, and that the analysis from NUSF-26 and NUSF-50 should simply be imported as the basis for establishing TELRIC rates for unbundled network loops in Qwest's serving areas. That approach is logically and legally wrong. It is one thing for the Commission to use the Staff's NUSF allocation methodology for the purposes of allocating NUSF support, but in this docket, the Commission must independently evaluate that methodology to determine whether it results in TELRIC-based costs for each of the six proposed zones. Accordingly, it is not only appropriate for the Commission to take a fresh look at the NUSF allocation methodologies, it is required.

2. *The NUSF Allocation Methodology From Docket NUSF-26 Was Used Simply To Allocate A Limited Pool Of NUSF Support, Not To Determine In-Town Or Out-Of-Town Costs.*

The record from the NUSF-26 docket confirms the limited purposes of the allocation methodology proposed and approved in that docket, and therefore confirms that the allocation methodology may not simply be imported into this docket without independent analysis. Repeatedly, Staff and its witnesses emphasized in the NUSF-26 proceedings that the NUSF allocation model was not being used to determine costs for serving in any particular area, but to allocate the limited pool of NUSF support to high cost out-of-town areas. In the Pre-filed testimony of David Rosenbaum, NUSF-26, filed August 11, 2004, Dr. Rosenbaum testified at page 2, lines 1-2 that "The SAM deals only with how universal service funds are to be allocated." At page 2, lines 22-26, he testified:

Q. What is the basic idea that underlies the SAM's allocation method?

A. The idea is to use relative loop costs in support areas throughout the state to determine each service area's share, and consequently, each NETC's share, of the NUSF fund.

In the Comments of David Rosenbaum, filed May 9, 2003, p.2, he stated:

The methodology presented here by the NPSC Staff (Staff), provides a fair and reasonable process in which to allocate the finite amount of NUSF support available to those NETCs providing service to high-cost areas.

The methodology presented herein provides for the allocation of NUSF support monies to NETCs based on the cost an NETC incurs in the provisioning of service, relative to the cost of service throughout the state. Thus, an NETC that provides service to many high-cost customers should receive a relatively large allocation of the fund. An NETC that provides service to fewer high-cost customers, or to customers that have only moderate costs should receive a relatively smaller allocation of the fund. An NETC that serves predominantly low-cost customers should receive little or no support.

NUSF director Jeff Pursley testified at the NUSF-26 hearing on August 26, 2004, at page 274 of the transcript that the Staff methodology was not being used to determine the "absolute costs" of providing loops in any particular area: "With that said, then, you need some way to determine costs. And as Dr. Rosenbaum testified, you need a method to determine relative costs, not absolute costs. And so that's what we used the BCPM model to do." Mr. Pursley was referencing the statements of Dr. Rosenbaum made moments earlier, found at pages 244-245 of the August 26, 2004 transcript:

Third thing, sufficiency. If you use it as a basis that absolute numbers that the BCPM model developed to get 200-and-some-million-dollar Fund, let me be very clear. Our process has never looked at absolute numbers. We're always looking at relative numbers. We're not saying that BCPM is the right size of the Fund. We're using it to look at costs [in] high cost areas relative to costs [in] low cost areas. In essence, we're saying, "We're not quite sure that \$70 is maybe the precise number, but we're arguing that \$70, relative to \$35, says it's probably twice as expensive over here as it is over here."

Staff's repeated assertions that it was not determining the absolute costs for serving any areas could not be more clear. Because the NUSF allocation model was

not used to determine actual costs, it cannot be automatically imported into this docket, which must determine the absolute costs to provide loops in each of the six proposed zones. Indeed, the discussion of six zones was never included in either Docket NUSF-26 or in NUSF-50 Progression Order No. 1. Moreover, the purpose of the allocation model and the discussion around it in NUSF-26 focused on the costs reflected in the out-of-town areas that would get support; there was virtually no discussion or evaluation of the costs reflected in the allocation model for in-town zones. In order to adopt the NUSF-26 methodology into this case, the Commission must make an independent evaluation in this docket, with a written record sufficient for review, of whether that methodology provides results that comply with TELRIC principles for each of the six zones. Qwest's testimony regarding the NUSF-26 allocation methodology challenges that assumption. Staff cannot use its own refusal to provide evidence in this docket as a shield against scrutiny of the NUSF allocation methodology to set prices for TELRIC loops in six separate zones.

3. *The Rates Developed In Docket C-2516 Are Not Only At Issue In This Case, Those Rates Are The Issue In This Case.*

Staff also attempts an evidentiary shortcut with respect to the results of the cost docket, C-2516. In its Motion to Strike, Staff asserts that "[t]he underlying rates established in C-2516 are not at issue in the present investigation." Nothing could be further from the truth. The entire purpose of this docket is to discard the rates and zones developed in C-2516, and much of Staff's testimony discusses the rates and methodology from C-2516. The rates and zones developed in that docket are used to determine Qwest's potential revenue to be reallocated according to Staff's proposed methodology, and as such are very much at issue. Qwest's proposal, reflected in Peter

Copeland's testimony beginning at page 16, line 8, and summarized in Exhibit 5 to his testimony, is to keep the C-2516 methodology, and update the inputs to reflect current facts and conditions. Staff does not even suggest updating the results to reflect current conditions, nor does Staff provide any evidence that the proposed rates would be TELRIC-compliant without updating. As such, the only party that actually supports the results of C-2516 in this docket is Qwest. If the C-2516 results are immune from challenge, the entire Staff proposal must be scrapped.

Conclusion

Staff's Motion to Strike is ill-founded. However, the filing of the Motion does serve one helpful function – it crystallizes a core dispute at issue in this case. Staff would prefer virtually no evidence in this case – and instead reallocate Qwest's current loop revenue (from residential lines only) among in-town and out-of-town zones simply by analogy from universal service dockets, where the absolute costs and the six proposed zones were not at issue and were never examined. Qwest requests a full evidentiary examination of all of the aspects of the proposed Unifying Method in this case, independent of any other docket, so that the Commission may determine unbundled loop rates on a full record. Staff's bare-bones evidence approach to an issue of significant importance to the citizens of Nebraska will not withstand future challenge or review, which requires that the Commission deny the Motion to Strike.

Dated Monday, April 30, 2007.

Respectfully submitted,

QWEST CORPORATION

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Certificate of Service

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